

# Disciplinary Committee Decision

## Complaint about Garry Newton

### In accordance with:

Chartered Professional Engineers of New Zealand Act 2002

Chartered Professional Engineers of New Zealand Rules (No 2) 2002

Engineering New Zealand Rules 2019

Engineering New Zealand Complaints Resolution and Disciplinary Regulations 2017

### Prepared by

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### Chair of Disciplinary Committee

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Stu Geddes Consumer Representative

Dr Cordelia Thomas Barrister and Solicitor of the High Court of New Zealand

### Members of the Disciplinary Committee

18 February 2026

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# Executive Summary

1. In June 2020, Mr A (the **Complainant**) raised a concern with Engineering New Zealand about Mr Garry Newton (the **Respondent**). The complaint concerned engineering services provided by Mr Newton in relation to six buildings in the Masterton and Carterton areas. Following a full investigation of the matter by the Investigating Committee, issues relating to Building A and Building B were referred to the Disciplinary Committee.

## Decision

2. Having considered the information available to us, we have found in the matter of:
  - a. Building A:
    - i. Undertaking construction monitoring in the absence of a building consent and failing to adequately advise the client, the complaint is upheld.
  - b. Building B:
    - ii. Failing to adequately advise his clients about building consent requirements, the complaint is upheld.
    - iii. Failing to undertake engineering services competently and with care when submitting documentation to the relevant building consent authority, the complaint is dismissed.

## Background

3. Mr Newton was a Chartered Professional Engineer and Chartered Member of Engineering New Zealand at the time he performed the engineering services complained of, being from 2018 to 2021. Mr Newton is currently the director of Structural Concepts Limited.
4. Mr A was working as a building control consultant. He made the complaint in his personal capacity but with Masterton District Council's knowledge that he was doing so.

## The Complaint

5. On 3 June 2020, Mr A complained to Engineering New Zealand about engineering services provided by Mr Newton in relation to six properties in the Masterton and Carterton regions. The concerns related to these properties generally fell into the following categories:
  - Concerns related to Mr Newton's alleged willingness to inspect works which have started without the required building consent.
  - Concerns related to the adequacy of Mr Newton's advice to clients regarding legal and safety risks involved when commencing and inspecting works without a building consent.
  - Concerns related to the competency of some of Mr Newton's engineering work which is brought into question by the number of peer review issues raised in relation to his work and the sometimes-confusing mix of current and superseded documents provided to building consent authorities.
6. An initial investigation was carried out by a complaints research officer who recommended the matter be referred on for further investigation. A chairperson of investigating committees was appointed, who in May 2021 issued a decision to refer the matter to an investigating committee.
7. In July 2021 an investigating committee was appointed. The Investigating Committee considered the suitability of alternative dispute resolution (ADR) and was of the view it would not be appropriate in this instance. Having reviewed the evidence provided, the Investigating Committee, in its decision dated 13 February 2025, considered there were grounds for dismissal for issues relating to four of the six properties raised in Mr A's initial concerns. However, issues related to two properties, Building A and Building B, have been referred to a disciplinary committee to consider. These concerns are detailed below.

## Building A

8. Sometime prior to July 2019, Mr Newton was engaged to provide engineering services for Building A.
9. The architect, DJ Silverwood Architects Limited, submitted the building consent application to the Masterton District Council on 22 July 2019. The documents included engineering designs, specifications and calculations, and a Producer Statement: Design (**PS1**) signed by Mr Newton, dated 18 July 2019.
10. The building owner engaged Design Phase Limited to conduct a peer review of Mr Newton's work. On 8 August 2019, Design Phase Limited completed a Producer Statement: Design Review (**PS2**) for the work.
11. The Masterton District Council granted building consent on 5 September 2019. The building consent stated Mr Newton's firm was engaged to conduct inspections of the concrete walls and structural steel and would provide a Producer Statement – Construction (**PS4**) "*on completion of the building works designed to ACENZ/IPENZ Level CM3.*"
12. On 27 February 2020, the architect made an application for a Certificate of Acceptance (**CoA**). The reason given for the application was:

... the work in question was carried out while the Building Consent application was being processed. Building Consent has now been issued for the whole development, including this work.

13. This application for a CoA also included a PS4 signed by Mr Newton, dated 12 November 2019 which detailed that some works and key inspections had been completed prior to the building consent issued. These were:
  - a. An inspection related to a "*reo-bar*" undertaken on 2 July 2019 by CAD Services & Design Limited, on behalf of Mr Newton's firm.
  - b. An inspection related to the "*Revised Brace connection details*" undertaken on 5 August 2019 by Engineer Y of Mr Newton's firm.
  - c. An inspection relating to bracing under the first floor undertaken on 21 August 2019 by Engineer Y.
14. The Certificate of Acceptance was issued by the Masterton District Council on 23 July 2020.
15. On 5 January 2021 Mr Newton acknowledged he was asked to inspect the work before a building consent had been granted, but stated he undertook the inspections because:

In the interests for [sic] safety to others we reluctantly carried out one inspection knowing that concrete would be poured regardless of whether we inspected or not and potentially any defects would then be hidden from view.

16. Mr Newton's has provided an email dated 8 October 2021 from his client, confirming that Mr Newton had advised against proceeding without a consent:

I can confirm, because of numerous delays in getting a building permit, I gave the builders the go ahead to install 4 steel bracing beams, below the ceiling and box 3 concrete bracing walls, in the new restaurant project job at [Building A] This was against the advice from my engineers, Structural Concepts Ltd. They wanted for me to wait until we had a permit. They also were reluctant to carry out any inspections without Council approval.

17. Mr Newton did not put this advice in writing. Additionally, there was no evidence he informed the client of the potential adverse consequences of not following his advice.
18. Mr Newton did not notify the appropriate regulatory body of the unconsented works.

## Building B

19. Sometime prior to July 2018, Mr Newton was engaged to provide engineering services relating to the seismic strengthening of Building B. The reinforced concrete building was identified by the Masterton District Council as being potentially earthquake prone.
20. On 27 July 2018, Mr Newton issued a Detailed Seismic Assessment (**DSA**), assessing the building as being 30%NBS and recommending strengthening be undertaken to bring it up to a minimum of 67%NBS.

21. During a site visit, the owners of the property informed Mr Newton that work would begin in approximately one month's time. Mr Newton states he asked if a building consent had been granted, to which he says the property owners did not believe they needed one. Mr Newton later stated to the Investigating Committee that he believed his client would have been aware of their obligations under the Building Act as they were experienced developers/contractors.
22. Construction work on Building B commenced in January 2019, without building consent.
23. The Masterton District Council issued a Notice to Fix to the owners on 11 September 2019.
24. On 11 September 2019, Mr Newton made an application for a CoA on behalf of the owners. The application included: engineering designs dated 24 July 2017 (for strengthening to 100%NBS) by Mr Newton, the DSA signed by Mr Newton, and a PS2 by Design Phase Limited dated 25 June 2019, referring to strengthening to 100%NBS.
25. The reason selected on the application for the CoA was:

a building consent could not practicably be obtained in advance because the building work had to be carried out urgently ... for the purpose of saving or protecting life or health or preventing serious damage to property as follows" and the words "NBS upgrade" were handwritten onto the application form.
26. The Masterton District Council inspected the building work on 20 September 2019. The inspection failed for a number of reasons, including:
  - the peer review did not correspond with the working drawings;
  - the PS1 needed to be revised to correct the %NBS; and
  - the engineer's construction inspection notes needed to reflect the absence of ground floor shear walls.
27. The Council rejected the application for the CoA.
28. On 23 October 2020, the owner submitted a second application for a CoA. The Masterton District Council rejected the application on 3 November 2020 citing various shortcomings in documentation and sign-offs provided. The Council said it needed to take a conservative approach for works of this magnitude where there was no clear reason why the works were completed without building consent. It said:

The PS1 shows that the document has been modified/annotated over on the strengthening design to 70% NBS and dated 16 October 2020. The PS2 has been signed by [Engineer X] on behalf of Structural Concepts Ltd, dated days after the design was completed, not as an independent engineer ... and with no PS2 review correspondence. Application stated that the work started in January 2019 however the design documentation (PS1 & PS2) is dated October 2020 and the design drawings are dated August 2017. ... No on site monitoring or construction evidence from an engineer has been provided with the COA application .... We have not analysed the technical content as we would typically rely on peer review from a second engineer, only supplementary calculations have been supplied, a full design record of work with calc is required in order for MDC to consider acceptance.
29. On 24 December 2020 Mr Newton submitted a third CoA. The documentation for this CoA was peer reviewed by Spencer Holmes. This peer review found several areas of concern such as:
  - a. The situation of the existing building was not well described. Mr Newton did not provide the original drawings or a comprehensive DSA.
  - b. Work described in the calculations was not shown in the drawings. The scope of the strengthening needed clarification.
  - c. The assessment did not include a calculation of the existing floor diaphragms and building foundations.
  - d. The ductility of the walls had not been determined.
  - e. The PS2, although issued by the peer reviewer Design Phase Ltd and signed by Engineer X of that company, was noted as signed on behalf of Structural Concepts Ltd, rather than Design Phase Ltd. It is unclear whether a CoA has been issued to date.

# Disciplinary Committee

30. On 14 July 2025, a disciplinary committee was appointed to determine the complaint. The members of the Disciplinary Committee are:

- Jenny Culliford DistFEngNZ (Ret.) (Chair)
- Peter Boardman CPEng FEngNZ IntPE(NZ)
- Matt Bishop CPEng CMEngNZ IntPE(NZ)
- Stu Geddes Consumer Representative
- Dr Cordelia Thomas Barrister and Solicitor of the High Court of New Zealand

31. Prior to the hearing we obtained consent from the parties to hold the hearing ‘on the papers’. On 25 September 2025 we circulated the disciplinary hearing procedure to the parties. Amongst other things, the parties were invited to make written submissions and/or submit any further material for the Committee’s consideration. No submissions were received from the parties.

32. A hearing was held on the papers on 5 November 2025.

## Role of the Disciplinary Committee

33. Professional disciplinary processes primarily exist to protect the public, uphold professional standards, and maintain public confidence in the profession and its regulation. They do this by ensuring that members of the profession adhere to certain accepted professional standards.<sup>1</sup>

34. Our role is to hear the complaint and decide whether there are grounds for disciplining Mr Newton; and if so, whether to order any penalty. If we decide there are no grounds to discipline Mr Newton, we must dismiss the complaint. If we decide there are grounds to discipline Mr Newton, we must decide whether and how to exercise our powers under the Chartered Professional Engineers of New Zealand Act 2002 (the **CPEng Act**) and the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (the **CPEng Rules**), and the Engineering New Zealand Rules 2019 (the **Membership Rules**) Engineering New Zealand Disciplinary Regulations 2020 (the **Disciplinary Regulations**), and the Code of Ethical Conduct 2016.

35. While the Disciplinary Committee includes members with structural engineering expertise, and this has been brought to bear in our deliberations, it is not our role to undertake a peer review of Mr Newton’s work

## Relevant Law

### Burden of proof

36. The standard of proof in professional disciplinary cases is the civil standard, namely on the balance of probabilities, rather than the criminal standard of proof. The Committee must apply a degree of flexibility to the balance of probabilities taking into account the seriousness of the allegation, and the gravity of the consequences flowing from a particular finding.<sup>2</sup>

37. The case of *Klepacki (Klepatski) v Institution of Professional Engineers New Zealand* establishes that<sup>3</sup>

The burden of proof in a disciplinary proceeding rests on the disciplinary body. The standard of proof is the civil standard, which is that facts must be proved on the balance of probabilities.

38. In applying this to these proceedings, we have taken this to mean the burden of proof rests on the Investigating Committee, acting on behalf of the Registration Authority/Engineering New Zealand. This means that it is for the Investigating Committee to establish that there is a ground of discipline applicable to the engineer’s conduct.

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<sup>1</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC)

<sup>2</sup> *Z v Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [112].

<sup>3</sup> *Klepacki (Klepatski) v Institution of Professional Engineers New Zealand* [2017] NZHC 3300; BC201762841 at [15].

## Professional Misconduct

39. Pursuant to section 21 of the CPEng Act it is a ground for discipline to breach the code of ethics contained in the CPEng Rules. Additionally, it is a ground for discipline under the CPEng Act to perform engineering services in a negligent or incompetent manner. Rule 4.3 of the Membership Rules notes that it is a ground for discipline to breach the Code of Ethical Conduct for members of Engineering New Zealand.
40. The “standard against which to measure the performance of a Chartered Professional Engineer” for alleged breaches of the code of ethics is:
- ... whether there has been a serious lack of care judged by the standards reasonably expected of a Chartered Professional Engineer. That standard may be informed by whether reasonable members of the public would consider such act or omission, if acceptable to the profession, were to lower the standards of that profession in the eyes of the public.<sup>4</sup>
41. In relation to section 21(1)(c), the Chartered Professional Engineers Council in *R v K* stated that the starting point is to consider the benchmark for negligent or incompetent behaviour. The Council said:<sup>5</sup>
- We consider that incompetence is a more serious allegation than negligence. One can be negligent without being incompetent, but it is highly unlikely that someone who is incompetent is not also negligent.
42. In *Robinson v Registration Authority*, the Chartered Professional Engineers Council outlined the relevant tests for determining whether engineering services have been performed in a negligent and incompetent manner:<sup>6</sup>
- Whether engineering services have been performed in a negligent manner is a question of whether there has been a serious lack of care judged by the standards reasonably expected of a Chartered Professional Engineer. That standard may be informed by whether reasonable members of the public would consider such act or omission, if acceptable to the profession, were to lower the standards of that profession in the eyes of the public.
- Whether engineering services have been performed in an incompetent manner is a question of whether there has been a serious lack of competence (or deficit in the required skills) judged by the areas of competence which in this case are encapsulated in Rule 6 [of the Chartered Professional Engineers of New Zealand (No 2) 2002].
43. We note that this threshold for establishing a ground for discipline related to incompetence and negligence appears to be the same as the threshold for establishing a ground for discipline related to a breach of the code of ethics contained in the CPEng Rules.

## Issues to determine

44. The notice of issues and particulars provided to the Disciplinary Committee is attached as “Appendix A” to this decision.
45. In summary, the issues for the Disciplinary Committee to determine are set out below.

### Building A

#### Issue 1: Undertaking construction monitoring in the absence of a building consent and failing to adequately advise the client

46. The Disciplinary Committee is tasked with considering:
- a. whether Mr Newton undertook construction monitoring in the absence of a building consent, and whether he failed to adequately advise the client in relation to Building A and;
  - b. if this is substantiated, whether any or all of the following grounds of discipline are established:

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<sup>4</sup> Appeal #29: 10 July 2015, *Robinson v RA* at [40(b)].

<sup>5</sup> Appeal #21: 10 November 2014, *R v K* at [36].

<sup>6</sup> *Robinson v RA* above n 4 at [40(b)-(c)]

## CPEng

- i. Section 21(1)(b) of the CPEng Act: It is a ground for discipline if a chartered professional engineer breaches the code of ethics contained in the CPEng rules. The Investigating Committee has identified the following provisions as being relevant:
  - A potential breach of clause 42D of the code of ethics contained in the CPEng Rules, which states a chartered professional engineer who has reasonable grounds to believe that an engineering matter has, or could have, adverse consequences<sup>7</sup> must bring the matter to the notice of the relevant regulatory body unless the engineer, having made inquiries, is satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or in an appropriate manner; and/or
  - A potential breach of clause 42E(a)(iii) of the code of ethics contained in the CPEng Rules, which states a chartered professional engineer must undertake engineering activities in a careful and competent manner; and/or
  - A potential breach of clause 42G of the code of ethics contained in the CPEng Rules, which states a chartered professional engineer who becomes aware that the engineer's professional advice may not be followed, and who considers that a failure to observe that advice may have adverse consequences, must inform the recipient of the advice of those adverse consequences.

## Membership

- ii. Rule 4.3 of the Membership Rules states that all members must comply with the Code of Ethical Conduct. The Investigating Committee has identified the following provisions as being relevant:
  - A potential breach of clause 3 of the Code of Ethical Conduct which states if you have reasonable grounds to believe that an engineering matter has, or could have, adverse consequences<sup>8</sup> you must bring the matter to the notice of the relevant regulatory body unless, having made inquiries, you are satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or in an appropriate manner
  - A potential breach of clause 4(a)(iii) of the Code of Ethical Conduct which states you must undertake engineering activities in a careful and competent manner
  - A potential breach of clause 6 of the Code of Ethical Conduct which states if you become aware that your professional advice may not be followed, and consider that a failure to observe that advice may have adverse consequences, you must inform the recipient of the advice of those adverse consequences

## Building B

### Issue 2: Failure to adequately advise his clients about building consent requirements

47. The Disciplinary Committee is tasked with considering :
  - a. whether Mr Newton failed to adequately advise his clients about building consent requirements in relation to Building B, and;
  - b. if this is substantiated, whether any or all of the following grounds of discipline are established:

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<sup>7</sup> Adverse consequences are defined at rule 42A of the CPEng Rules as “(a) significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people; or (b) significant damage, or an unacceptable likelihood of significant damage, to the environment”

<sup>8</sup> The Code of Ethical Conduct defines adverse consequences as: “a. significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people. b. significant damage, or an unacceptable likelihood of significant damage, to the environment.”

### **CPEng**

- iii. Section 21(1)(b) of the CPEng Act: It is a ground for discipline if a chartered professional engineer breaches the code of ethics contained in the CPEng Rules. The Investigating Committee has identified the following provision as being relevant:
  - A potential breach of clause 42E(a)(iii) of the code of ethics contained in the CPEng Rules, which states a chartered professional engineer must undertake engineering activities in a careful and competent manner
- iv. Section 21(1)(c) of the CPEng Act: It is a ground for discipline for a chartered professional engineer to perform engineering services in a negligent or incompetent manner.

### **Membership**

- v. Rule 4.3 of the Membership Rules states that all members must comply with the Code of Ethical Conduct. The Investigating Committee has identified the following provisions as being relevant:
  - A potential breach of clause 4(a)(iii) of the Code of Ethical Conduct which states you must undertake engineering activities in a careful and competent manner

## **Issue 3: Failure to undertake engineering services competently and with care**

48. The Disciplinary Committee is tasked with considering:
  - a. whether Mr Newton failed to undertake engineering services carefully and competently when submitting documentation to the relevant building consent authority in relation to Building B, and;
  - b. if this is substantiated, whether any or all of the following grounds of discipline are established:

### **CPEng**

- vi. Section 21(1)(b) of the CPEng Act: It is a ground for discipline if a chartered professional engineer breaches the code of ethics contained in the CPEng Rules. The Investigating Committee has identified the following provision as being relevant:
  - A potential breach of clause 42E(a)(iii) of the code of ethics contained in the CPEng Rules, which states a chartered professional engineer must undertake engineering activities in a careful and competent manner

### **Membership**

- vii. Rule 4.3 of the Membership Rules states that all members must comply with the Code of Ethical Conduct. The Investigating Committee has identified the following provisions as being relevant:
  - A potential breach of clause 4(a)(iii) of the Code of Ethical Conduct which states you must undertake engineering activities in a careful and competent manner

## **Information considered**

49. The Disciplinary Committee has read and considered the bundle of documents, including all information gathered up to and including the Investigating Committee stage.
50. We have considered further material obtained since the Investigating Committee issued its report, including a response from Mr Newton to one request for information (**RFI**).
51. This information was provided to both parties for their comment.
52. Beyond responding to the RFI we sent (reproduced below), Mr Newton did not submit any further material or make any further submissions to the Committee.
53. Mr A also did not submit any further material or make any further submissions to the Committee.

## RFI from the Disciplinary Committee

54. On 11 August 2025 the Disciplinary Committee wrote to Mr Newton asking further questions. Mr Newton responded on 20 August 2025. These questions and his responses are reproduced below:

- a) *We note that in relation to [Building A] you stated you proceeded with inspections prior to the grant of building consent “in the interests of safety”, Please advise what specific health and safety risks were observed or anticipated (if any)? Were any alternative mitigating actions considered?*

*GN: The safety risk I recognised was that not inspecting could have led to substandard construction (misplacement of reinforcing, incorrect laps and locations, incorrect starter size and placement fixed into existing concrete elements, etc.). Because the new work was concrete, I was concerned that the owner potentially would have tried to encourage the Council officials to accept it rather than demolish and replace it if an engineer was prepared to review and accept it as cast. In this case it is unlikely that these types of defects could not be picked up without demolition and therefore posed a risk to life. This then could have meant early failure of the element under design loads causing injury or death to the occupants of the building. The only other mitigating action I considered at the time was for my Client to get permission from the council to carry out this work prior to the consent being issued that would then allow the risk to be eliminated. In hindsight, I would now refuse to inspect without something in writing from the council or a building consent/exemption being granted. I would document my advice and refuse to be involved in approving the illegally cast work leaving my client to either get another Engineer to accept the work or demolish the works and start again at council request.*

- b) *What specific advice did you provide to your client about the risks of proceeding with building works without a building consent? Please advise the date on which the advice was provided and explain why this was not provided in writing or otherwise recorded.*

*GN : My response to my Client was that “they ran the risk of being required to demolish and replace the works plus be fined for infringing the Building Act”. I do not have an exact date of this conversation taking place as I cannot access my calendar anymore however, I believe the conversation occurred approximately 1 or 2 weeks prior to the inspection. I did not record or put my advice in writing due to the trust I had with the Client.*

- c) *Did you consider informing the Council that the concrete was about to be poured prior to the grant of building consent and if not why not?*

*GN: Yes, I did consider informing the Council but I was led to believe that the Council were be made aware of the works occurring and allowed this small area of work to be carried out. Further my Client was insistent on having the inspection and that he was going to pour to keep the project on track and thus felt pressured.*

- d) *With regard to [Building B] how were the certificate of acceptance application packages compiled, and why were they not submitted as a complete set for each application?*

*GN: The documents were sent to the Council twice. This was because we were advised by the Council Officer that the first documents were not in the acceptable methodology as requested by the Council to our Client which we were not aware of. The documents were then repackaged and resubmitted as requested as a) COA document for the physical work completed by our Client prior to the submission and b) separately BC documents for the works yet to be completed. This may have led to some confusion. As far as I was aware the documents were issued as complete sets for the different areas of work. In hindsight I believe this could have been done better to make the documents clearer and obvious. Unfortunately, the time constraints at the time did not allow the team to do this.*

- e) *You stated that you were informed by the client that work was about to commence in a month’s time and the client did not think a building consent was needed. Please advise when this took place and what your response was. Did you consider informing the Council at that stage and if not why not?*

*GN: I believe the meeting with the Client where obtaining a building consent was discussed took place around December 2018. My response to him at the time was that I was surprised he was*

*looking to progress so quickly, and I believed the work needed a building consent and a peer review or an exemption and that he should talk to the council about this to get direction from them if it could be exempt. I did not inform the Council at this stage as no work had taken place, and I was naively optimistic that my Client would take my advice and contact the Council.*

- f) *Please provide any further information you think relevant in response to the investigating committee decision.*

*GN: I do not have any further information I can provide that has not already been supplied to the investigating committee.*

## Discussion

### Issue 1: Undertaking construction monitoring in the absence of a building consent and failing to adequately advise the client

55. The factual elements of this issue are not in dispute. The dates of the inspections and date of the building consent applications and issue confirm that building work was completed prior to the consent being granted, and in some cases prior to the application being made. Mr Newton has acknowledged that he undertook construction monitoring in absence of a building consent:

*In the interests for [sic] safety to others we reluctantly carried out one inspection knowing that concrete would be poured regardless of whether we inspected or not and potentially any defects would then be hidden from view.*

56. Mr Newton has also acknowledged:

*In hindsight, I would now refuse to inspect without something in writing from the council or a building consent/exemption being granted. I would document my advice and refuse to be involved in approving the illegally cast work leaving my client to either get another Engineer to accept the work or demolish the works and start again at council request*

57. The next question for this Committee is whether any grounds for discipline are established.

58. To begin, the Committee notes that the building consent system is intended to ensure building works are carried out in compliance with the requirements of the Building Act and Code. The importance of ensuring building works are not completed without a building consent is highlighted by section 40 of the Building Act, which makes it an offence to carry out any building work except in accordance with a building consent. Chartered professional engineers play a key role in ensuring compliance with the Building Act and Code is achieved, particularly through the producer statement system.

59. We note that Mr Newton has provided an email from his client confirming that he provided verbal advice to his client not to proceed with building works. However, we note that this advice was not put in writing. Engineering New Zealand's Practice Note 8: Being Ethical establishes that:

*You must take every reasonable step to communicate the harmful consequences to those ignoring the advice. **Your advice should be in writing**, setting out why you are concerned and what the consequences could be. This ensures that you have a record of what action you took if you need it in the future.  
[emphasis added]*

60. Furthermore, we note that rule 42G of the CPEng Rules/clause 6 of the Code of Ethical Conduct requires engineers advise their clients of the adverse consequences of not following their advice. Adverse consequences are defined as:

**adverse consequences** means—

- a) significant harm, or an unacceptable likelihood of significant harm, to the health or safety of people; or
- b) significant damage, or an unacceptable likelihood of significant damage, to the environment

61. Mr Newton himself noted that there were potential safety risks to proceeding without a building consent:

The safety risk I recognised was that not inspecting could have led to substandard construction (misplacement of reinforcing, incorrect laps and locations, incorrect starter size and placement fixed into existing concrete elements, etc.). Because the new work was concrete, I was concerned that the owner potentially would have tried to encourage the Council officials to accept it rather than demolish and replace it if an engineer was prepared to review and accept it as cast. In this case **it is unlikely that these types of defects could not be picked up without demolition and therefore posed a risk to life**. This then could have meant early failure of the element under design loads causing injury or death to the occupants of the building. [emphasis added]

62. We consider the safety risks identified by Mr Newton constitute “adverse consequences” and are therefore concerned that, whilst the email from his client noted Mr Newton advised him not to proceed without a building consent, there is no evidence he advised as to the potential safety risks or adverse consequences of doing so.
63. In response to our RFI, Mr Newton told us he was led to believe the Council was to be made aware of the works occurring and allowed the small area of work to be carried out. However, he did not follow up to check that the Council was advised of the impending construction works.
64. The Disciplinary Committee considers this failure to put his advice in writing, combined with the failure to advise the client of the adverse consequences of not following his advice falls short of the standard of practice reasonably expected of a chartered professional engineer, and that grounds for discipline are applicable.

#### Ground 1: Rule 42D of the CPEng Rules/Clause 3 of the Code of Ethical Conduct

65. Rule 42D/Clause 3 requires an engineer, having reasonable grounds to believe that an engineering matter has, or could have adverse consequences must bring the matter to the notice of the relevant regulatory body unless the engineer, having made inquiries, is satisfied on reasonable grounds that the matter is being dealt with through an appropriate process or an appropriate manner.
66. The Committee considers Mr Newton should have assured himself that the Council was informed of the impending works and he was naïve in accepting without question the verbal assurance he had received from his client. We consider this aspect of Mr Newton’s conduct is more appropriately treated as a breach of rule 42E(a)(iii).

#### Ground 2: Rule 42E(a)(iii) of the CPEng Rules/Clause 4(a)(iii) of the Code of Ethical Conduct

67. We consider Mr Newton’s conduct constitutes a breach of rule 42E(a)(iii) of the CPEng Rules and clause 4(a)(iii) of the Code of Ethical Conduct.
68. Mr Newton failed to undertake engineering activities carefully and competently when he allowed building inspections/construction monitoring to proceed despite knowing no building consent had been granted. Further, we consider failing to take steps to prevent his client to proceed with building works in the absence of a consent, without first advising them of the adverse consequences of doing so and putting this advice in writing, amounts to a breach of the obligation to act carefully and competently.
69. Furthermore, we consider a chartered professional engineer acting carefully and competently, with the knowledge their client was conducting building work without a building consent, should have ensured the relevant building consent authority was notified. In applying the standard outlined in *Robinson v RA*, the Committee considers Mr Newton’s conduct would lower the profession in the eyes of the public, particularly as it relies on the profession to uphold standards and ensure building work is completed safely.

#### Ground 3: Rule 42G of the CPEng Rules/Clause 6 of the Code of Ethical Conduct

70. We consider a breach of rule 42G/clause 6 has been established.
71. Mr Newton was aware his client would be proceeding with building works prior to a consent being granted. Though his client states he was advised verbally by Mr Newton not to proceed, this advice was not put in writing, nor did it detail any potential adverse consequences of not following the advice.

## Issue 2: Failure to adequately advise his clients about building consent requirements

72. Again, the factual elements of this issue are not in dispute. Building work began on Building B in January 2019, before any building consent had been granted. Mr Newton acknowledges he was told at a site visit that building work would begin in approximately one month's time. He states he had asked his client whether a building consent had been obtained, and his client had stated that they did not think they needed one at that time. Mr Newton failed to advise his client that a building consent was required and to obtain one prior to commencing building works.
73. The next question for this Committee is whether any grounds for discipline are established.
74. As established above, building consents are crucial to ensuring building works are safely completed in accordance with the Building Act and Code. Chartered professional engineers play a key role in ensuring this compliance is achieved.
75. We consider a reasonable chartered professional engineer would have realized that the building work to be undertaken, being seismic strengthening, would have required a building consent. Building work as defined by section 7 of the Building Act 2004 includes work:
- (i) for, or in connection with, the construction, alteration, demolition, or removal of a building;
  - (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and
- (b) includes sitework; and
  - (c) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act (see subsection (2)); and
  - (d) in Part 4, and the definition in this section of supervise, also includes design work (relating to building work) of a kind declared by the Governor-General by Order in Council to be building work for the purposes of Part 4 (see subsection (2)); and
  - (e) includes the manufacture of a modular component
76. Further, we consider a reasonable engineer, knowing their client was intending to commence building works without a consent would have taken steps to adequately advise their client not to do so, the potential safety implications for doing so, and/or taken steps to notify the relevant building consent authority.

### Ground 1: Rule 42E(a)(iii) of the CPEng Rules/Clause 4(a)(iii) of the Code of Ethical Conduct

77. We consider Mr Newton's failure to advise his clients that a building consent was required for the planned building works and not to proceed without first obtaining one amounts to a breach of rule 42E(a)(iii) of the CPEng Rules and clause 4(a)(iii) of the Code of Ethical Conduct
78. Mr Newton was aware that works were proceeding without a building consent. We consider a reasonable chartered professional engineer should have, and would have, recognized the need for a building consent, particularly with works related to seismic strengthening.
79. We note that Mr Newton has stated his client were experienced developer/contractor that he had worked for over numerous years. As such he assumed they would be aware of their obligations under the Building Act. We consider a reasonable chartered professional engineer would still have taken measures to ensure compliance with the Building Act was achieved. This includes putting their advice in writing to provide a record of what action they took, and potentially advising the relevant building consent authority that unconsented works were commencing.
80. Again, in applying the standard outlined in *Robinson v RA*, the Committee considers Mr Newton's conduct would lower the profession in the eyes of the public. The public is reliant on the profession to uphold building standards and ensure safety.

### Ground 2: Section 21(1)(c) of the CPEng Act

81. We consider Mr Newton failed to act carefully when he did not advise his client that a building consent was required when he was made aware that they did not have one. Additionally, we consider Mr Newton did not act carefully when he failed to advise them not to proceed with the building works

without consent. In saying this, we consider that this conduct is better dealt with under rule 42E(a)(iii) of the CPEng Rules. We do not consider this conduct meets the higher threshold required of negligence and incompetence established in *R v K* and *Robinson v RA*.

82. As such, we do not consider a ground for discipline under section 21(1)(c) of the CPEng Act is established.

### Issue 3: Failure to undertake engineering services competently and with care

83. We consider the factual elements of this issue are substantiated. Mr Newton had to apply for a CoA three times in relation to Building B due to issues with the documentation. A peer review conducted by Spencer Holmes also finds areas of concern in relation to Mr Newton's documentation. It is clear there were shortcomings in the documentation provided by Mr Newton to the Masterton District Council.

#### Ground 1: Rule 42E(a)(iii) of the CPEng Rules/Clause 4(a)(iii) of the Code of Ethical Conduct

84. We have considered the responses provided by Mr Newton and agree that although the quality of the documentation provided by Mr Newton was somewhat lacking, there does not appear to be any issues with his technical competency.
85. Accordingly, whilst we consider the documentation was below normally expected professional standards, we consider this matter is insufficiently grave to warrant a ground for discipline and dismiss this issue.
86. The Committee wishes to note that we do not consider the quality of documentation provided by Mr Newton was of an adequate standard. We agree with the Investigating Committee, that numerous documents of contradictory or ambiguous nature going to the Council for consent has the potential to leave the Council with ongoing risks, particularly if they were ever needed for back analysis or for a change in seismic standards. Accordingly, we urge Mr Newton to ensure future applications for building consents completed by himself or his firm are completed to an adequate standard.

## Decision

87. Having decided that issues 1 and 2 are evidentially substantiated, we must decide whether there are grounds to discipline Mr Newton in accordance with the CPEng Act and the Engineering New Zealand Rules.
88. We find that Mr Newton breached the Code of Ethical Conduct applicable to both a chartered professional engineer and member of Engineering New Zealand. The Code requires an engineer to inform others of the consequences of not following advice and to undertake engineering activities in a careful and competent manner. We consider that Mr Newton did not act in accordance with the standards reasonably expected of a chartered professional engineer.
89. Having considered all the evidence, including responses to RFIs, we are satisfied that, on the balance of probabilities, there are grounds for discipline under section 21(1)(b) of the CPEng Act and the Engineering New Zealand Rules.
90. There is a range of disciplinary actions available to a disciplinary committee as set out in section 22(1) of the CPEng Act. There is also a range of disciplinary actions in relation to Mr Newton's membership with Engineering New Zealand under the Engineering New Zealand Complaints and Disciplinary Regulations 2017.

## Penalty

91. We reserved our decision on disciplinary sanctions and invited submissions from both parties on the appropriate penalty. We received submissions from Mr Newton. Mr A provided no submissions on penalty.

92. Following receipt of the submission from Mr Newton, we have considered and determined the penalties to be imposed.

## Relevant Law

93. In *Roberts v A Professional Conduct Committee* of the Nursing Council of New Zealand the High Court outlined a number of principles to be applied by the Health Practitioners Disciplinary Tribunal in determining the appropriate penalty to impose in disciplinary proceedings. The High Court determined that a disciplinary penalty must:<sup>9</sup>

- protect the public (including through deterrence of other practitioners from engaging in similar conduct);
- set and maintain professional standards;
- where appropriate, rehabilitate the practitioner back to the profession;
- be comparable with penalties imposed on practitioners in similar circumstances;
- reflect the seriousness of the practitioner's conduct, in light of the range of penalties available;
- be the least restrictive penalty that can reasonably be imposed in the circumstances; and
- be fair, reasonable and proportionate in the circumstances.

94. The High Court also stated that while penalty may have the effect of punishing a practitioner, punishment is not a necessary focus for the Tribunal in determining penalty.

95. The principles in *Roberts* are broadly applicable to our power to make disciplinary orders under the Act and the Engineering New Zealand Rules and they are the principles we rely on when considering the appropriate penalty orders in this case.

96. The principles have general application to professional disciplinary proceedings in the light of the Supreme Court's decision in *Z v Dental Complaints Assessment Committee*.

97. In *Z*, the Supreme Court makes general statements about the purposes of professional disciplinary proceedings, noting that such proceedings are designed to:<sup>10</sup>

.... ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

98. This is consistent with *Roberts*, which lists public protection and the maintenance of professional standards as the foremost considerations relevant to penalty.

99. The Supreme Court in *Z v Dental Complaints Assessment Committee* also stated that while professional disciplinary proceedings are not intended to punish practitioners, they may have a punitive effect in practice.

100. This is also consistent with the principles set out in *Roberts*, in that the penalty must be the least restrictive penalty and that punishment is not a necessary focus of a disciplinary penalty.

101. It is appropriate that disciplinary penalties mark the profession's condemnation of the relevant conduct, noting that to do otherwise would not be consistent with the purpose of professional disciplinary processes.

102. Penalties available in the CPEng Act are the removal or suspension of Mr Newton's CPEng registration, censure and/or issuing a fine of up to \$5,000.<sup>11</sup>

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<sup>9</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.

<sup>10</sup> *Z v Dental Complaints Assessment Committee* SC 22/2007 [2008] NZSC 55

<sup>11</sup> Section 22 of the CPEng Act (However, section 22(2) of the Act places limitations on what penalties can and cannot be ordered simultaneously.)

103. Penalties available in relation to membership of Engineering New Zealand are:<sup>12</sup>

- (a) that the Engineering New Zealand member be removed from membership of Engineering New Zealand;
- (b) that the Engineering New Zealand member be suspended from membership for any period;
- (c) that the Engineering New Zealand member be suspended from membership until such time as the Engineering New Zealand member has fulfilled requirements for professional development as have been specified by the Committee;
- (d) that if by a prescribed date the Engineering New Zealand member fails to fulfil requirements for professional development as have been specified by the Committee the Engineering New Zealand member be suspended from membership for a specified period of time;
- (e) that the Engineering New Zealand member must pay a fine not exceeding \$5,000;
- (f) that the Engineering New Zealand member be reprimanded or admonished;
- (g) that the Engineering New Zealand member must pay costs and expenses of, and incidental to, the inquiry by Engineering New Zealand;
- (h) that upon completion of consideration of the complaint according to these regulations, the Engineering New Zealand member be named, the order made against the Engineering New Zealand member be stated and the nature of the breach described in the official journal of Engineering New Zealand, or publicised in any other manner as may be prescribed by the Committee.

### Name suppression

104. We start with the presumption that the respondent's name in a disciplinary matter such as this will be published.<sup>13</sup> Naming is the starting point and will only be inappropriate in a limited number of circumstances where the engineer's privacy outweighs the public interest.

105. In the interests of open justice, we consider it is important that we are transparent about the outcomes of disciplinary processes, which includes publishing the names of engineers found in breach of their duties. We consider naming practitioners assists to assure the public of the robustness of our process, sets the standard for the profession and acts to deter other practitioners from engaging in similar conduct. Strong reasons are required to rebut this presumption.

106. In *Y v Attorney-General* the Court of Appeal considered, in relation to professional disciplinary matters:

Given the almost limitless variety of civil cases and the fact that every case is different, the balancing exercise must necessarily be case dependent. Sometimes the legitimate public interest in knowing the names of those involved in the case (either as parties or as witnesses or both), or in knowing the detail of the case, will be high. *Hart v Standards Committee (No 1) of the New Zealand Law Society* was such a case. As this Court observed:

The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

Consequently, a professional person facing a disciplinary change is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure.

107. Further, section 18 of the Act mandates "*any order made on a disciplinary matter in the last 3 years*" is included is contained in the Registration Authority's public register of Chartered Professional Engineers. Section 16(2)(iv) states this is to "*enable members of the public to - know which chartered professional engineers have been disciplined within the last 3 years*". Naming engineers who have been disciplined is contemplated by the Act and in accordance with the register's purpose

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<sup>12</sup> Regulation 17 (3) of the Engineering New Zealand Regulations 2017

<sup>13</sup> *Y v Attorney-General* [2016] NZCA 474

## Costs

108. Under both the Act and Engineering New Zealand Regulations we are able to make an order in relation to costs. We do not consider costs are in the nature of a penalty, hence we consider them separately.

## Mr Newton's submissions

109. On 4 February 2026, Mr Newton provided submissions on penalty. Mr Newton thanked the Committee for the opportunity to comment on penalty. He noted that he forewent his chartered professional engineer registration in late 2024 and therefore is no longer a chartered professional engineer. He noted he has retained his Chartered Membership of Engineering New Zealand as he has a particular interest in advancements in structural engineering and likes to stay abreast of these. He submitted that he is now semi-retired.

110. Mr Newton also explained that in late 2020 and 2021 he instigated formal written advice to all clients on every project that no employee of his company would complete any inspections unless one of the following was provided to the company:

- a) a building consent copy;
- b) formal exemption in writing from the TA; or
- c) written confirmation from the TA stating that the inspection can go ahead.

111. Mr Newton also noted he would have difficulties undertaking CPD due to personal circumstances.

112. Mr Newton submitted that given he is now semi-retired and addressed the issues raised by the complaint in 2020-2021, he requests his name not be published.

## Discussion

113. We have considered the relevant case law, including *Roberts, Y & A-G* and *Z* and Mr Newton's submission in reaching our decisions on whether to impose a penalty, name suppression and/or make an order in relation to costs

114. As expressed in our decision, we consider that Mr Newton's conduct in relation to issues 1 and 2 was a departure from the standards expected of CPEng engineers and members of Engineering New Zealand. That is, we have found that Mr Newton breached his obligations under the Code of Ethical Conduct to undertake engineering activities in a careful and competent manner and to inform others of the adverse consequences of not following his advice.

115. In our view, Mr Newton's actions, if condoned, would undermine the public's trust in the engineering profession and reduce the public confidence in the Chartered Professional Engineer title and membership with Engineering New Zealand.

116. Protection of the public is front of mind for us as we determine the appropriate penalty. We are aware that structural engineering inherently involves life safety implications and so deterring other practitioners from such conduct is also important, along with setting and maintaining the standards for structural engineers. The decisions engineers make can have wide-reaching effects, including consequences for multiple parties: clients, territorial authorities and the public.

117. We also acknowledge that the conduct giving rise to the upheld issues can have an impact on the profession as a whole, in terms of undermining the public's trust and confidence in the profession.

118. However, as we consider the conduct is in the low to mid category, we do not consider it to be at the upper end of the scale. We are also aware of our obligation to impose the least restrictive penalty given all the circumstances.

## Fine

119. We have given careful consideration to whether a fine should be imposed and, if so, what the fine should be. As stated in our decision, we consider Mr Newton's conduct was below the standard reasonably expected of a Chartered Professional Engineer, and as such we consider it is reasonable in the circumstances to impose a fine.

120. In determining the appropriate level of fine, we have considered comparable decisions issued by disciplinary committees. We have also taken into account that Mr Newton promptly took steps to improve his practice in 2020 and 2021 upon being notified of the complaint, and that he has been responsive and cooperative throughout the disciplinary process. In addition, we acknowledge that there were delays in the progressing this matter that were through no fault of Mr Newton. Having regard to these factors, we consider a fine of \$500 to be reasonable, proportionate, and consistent with previous disciplinary outcomes.

## Censure

121. In keeping with the object of the Act and the establishment of the title of Chartered Professional Engineer, we also order Mr Newton to be censured. This censure acts to mark the profession's condemnation of Mr Newton's actions and deters others from similar conduct.

## Registration and Membership of Engineering New Zealand

122. We note that Mr Newton has since retired his chartered professional engineer registration and is now a semi-retired engineer. We also acknowledge Mr Newton has retained his chartered membership to stay abreast of advancements in structural engineering.

123. We consider that although Mr Newton's misconduct was repeated, it falls at the mid-to-lower end of the severity scale. In light of this, and mindful of our obligation to impose the least restrictive penalty reasonably available in the circumstances, we consider that suspending Mr Newton's membership would be disproportionately harsh.

## Naming and publication

124. The Disciplinary Committee acknowledges Mr Newton has requested that his name suppression remain in place; however, we also note there is a presumption that the name of the respondent in a disciplinary matter will be named. We do not consider there are any factors in this case to warrant a departure from the standard practice of naming the practitioner.

125. Furthermore, we consider naming Mr Newton is important in upholding the principle of open justice, and ensuring the public can trust that the professional body for engineers will take action when its members fail to meet the reasonable standard expected of them. Accordingly, we order Mr Newton's name suppression is lifted and a copy of this decision is published

## Costs

126. Costs in disciplinary proceedings such as this arise in relation to costs incurred in investigating and hearing the complaint. While the generally-accepted starting point is 50% of the costs attributable to the investigation and disciplinary process incurred by Engineering New Zealand, aggravating and mitigating factors may be taken into account and the figure can be adjusted up or downwards. The balance of costs must be met by the profession itself.<sup>14</sup>

127. We have not received any information about Mr Newton's financial position that would indicate any financial hardship or inability to pay costs.

128. We acknowledge the disciplinary proceedings have been delayed and no fault can be attributed to the Mr Newton here. Additionally, we acknowledge that Mr Newton has been cooperative and responsive throughout the disciplinary process. As such, we adjust the starting point downwards and order that Mr Newton pays 40% of the costs. We note this order is unusual and highly specific to this case.

# Summary of Orders

129. In exercising our delegated powers in relation to the Chartered Professional Engineers Act and Rules and Engineering New Zealand membership rules, we order that:

- a. Mr Newton is censured;

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<sup>14</sup> PCC v Van Der Meer 1019/Nur18/422P

- b. Mr Newton pay a fine of \$500
- c. Mr Newton pays costs amounting to \$4,979 +gst

130. Additionally, Engineering New Zealand/the Registration Authority will publish our final decision of this complaint, naming Mr Newton on its website and in any other communication it considers appropriate.

131. Mr Newton's name suppression is lifted.



Jenny Culliford DistFEngNZ (Ret.)  
**Chair of Disciplinary Committee**

Peter Boardman CPEng FEngNZ IntPE(NZ)

Matt Bishop CPEng CMEngNZ IntPE(NZ)

Stu Geddes Consumer Representative

Dr Cordelia Thomas Barrister and Solicitor of the High Court of New Zealand

**Members of Disciplinary Committee**

**18 February 2026**

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# Appendix A: Issues and Particulars

## Building A

### Issue 1: Undertaking construction monitoring in the absence of a building consent and failure to adequately advise the client

1. Mr Garry Newton, a director of Structural Concepts Limited, an engineering firm, is a structural engineer, a Chartered Professional Engineer (**CPEng**), and Chartered Member of Engineering New Zealand (**CMEngNZ**).
2. Mr Newton was engaged to provide engineering services relating to the seismic strengthening of the building and conversion of the ground floor to a restaurant at Building A
3. On 18 July 2019, Mr Newton completed a Producer Statement: Design (**PS1**) form for the engineering designs, specifications and calculations.
4. The owner engaged Design Phase Limited to conduct a peer review of Mr Newton's work. On 8 August 2019, Design Phase Limited completed a Producer Statement: Design Review (**PS2**) for the work.
5. On 5 September 2019, Masterton District Council granted a building consent for the work at Building A. The building consent stated that Mr Newton's firm was to conduct inspections of the concrete walls and structural steel and would provide a Producer Statement – Construction (**PS4**) on completion of the works
6. After the building consent was granted, Masterton District Council (the **Council**) discovered that some work and key inspections had been completed prior to a consent being issued. These were:
  - a. An inspection related to a "reo-bar" undertaken on 2 July 2019 undertaken by CAD Services & Design Limited, on behalf of Mr Newton's firm.
  - b. An inspection relating to revised brace connections details undertaken on 5 August 2019 by Engineer Y of Mr Newton's firm.
  - c. An inspection relating to bracing under the first floor was undertaken on 21 August 2019 by Engineer Y.
7. On 5 January 2021 Mr Newton acknowledged he was asked to inspect the work before a building consent had been granted, but stated he undertook the inspections because *"In the interests for [sic] safety to others we reluctantly carried out one inspection knowing that concrete would be poured regardless of whether we inspected or not and potentially any defects would then be hidden from view."*
8. While the client confirmed Mr Newton advised against proceeding without a consent, Mr Newton did not put this advice in writing. Additionally, there was no evidence he informed the client of the potential adverse consequences of not following his advice.
9. Mr Newton did not take steps to satisfy himself that the engineering matter was being handled appropriately, and then also failed to report the unconsented work to the appropriate regulatory body.

#### **CPEng**

10. Under section 21(1)(b) of the Chartered Engineers of New Zealand Act 2002 (**CPEng Act**), it is a ground for discipline if it is determined that a chartered professional engineer has breached the code of ethics contained in the Chartered Professional Engineers of New Zealand Rules (No 2) 2002 (**CPEng Rules**).
11. We consider that in failing to adequately advise his client, and in particular advise him of the adverse consequences of not following his advice, Mr Newton may have breached his obligation under rule 42G of the Code, to inform others of the consequences of not following advice.

12. We consider the decision to complete construction monitoring without a building consent raises concerns with whether Mr Newton has acted carefully and competently in line with his obligation under rule 42E(a)(iii) of the CPEng Rules.
13. We consider Mr Newton's failure to inform the Council of the matter may amount to a breach of Mr Newton's obligation under rule 42D of the CPEng Rules which forms a part of the code of ethics, that where an engineer who has reasonable grounds to believe that an engineering matter has or could have adverse consequences must bring the matter to the notice of the relevant regulatory authority.
14. In light of the above, we consider that Mr Newton may have breached the Code, such that a ground of discipline under section 21(1)(b) of the Act may apply in respect of him.

### **Membership**

15. In respect of Mr Newton's membership of Engineering New Zealand, under rule 4.3 of the Engineering New Zealand Rules 2019 (**Membership Rules**), all members must comply with the Code of Ethical Conduct for members.
16. We consider that in failing to adequately advise his client, and in particular advise him of the adverse consequences of not following his advice, Mr Newton may have breached his obligation under clause 6 of the Code, to inform others of the consequences of not following advice.
17. We consider Mr Newton's decision to proceed with construction monitoring without a building consent may amount to a breach of Mr Newton's obligations under clause 4(a)(iii) of the Code of Ethical Conduct, to act carefully and competently.
18. We consider Mr Newton's failure to inform the Council of the matter may amount to a breach of Mr Newton's obligation under clause 3 of the Code, that where an engineer who has reasonable grounds to believe that an engineering matter has or could have adverse consequences must bring the matter to the notice of the relevant regulatory authority.
19. In light of the above, we consider that Mr Newton may have breached rule 4.2 of the Membership Rules, such that a disciplinary committee may make disciplinary orders in respect of him.

## **Building B**

### **Issue 2: Failure to adequately advise his client about building consent requirements**

1. Paragraph 1 for issue one is repeated for issue two.
2. Mr Newton was engaged to provide engineering services relating to the seismic strengthening of the building at Building B.
3. On 27 July 2018 Mr Newton issued a Detailed Seismic assessment (**DSA**) which assessed the building as being 30%NBS, recommending strengthening be undertaken to bring it up to a minimum of 67%NBS.
4. The owners of the property informed Mr Newton that work would begin in approximately 1 months' time. Mr Newton states he asked if a building consent had been granted, to which he says the property owners did not believe they needed one.
5. Construction work began on the property at Building B (the **property**) in January 2019. No building consent had been issued.
6. On 11 August 2023 Mr Newton stated he believed the client would have been aware of their obligations under the Building Act as they were experienced developers/contractors.

### **CPEng**

7. Mr Newton failed to adequately advise his client that work should not proceed before a building consent is issued. We consider a reasonable engineer would have recognized that the work being completed required a building consent.

8. As such, we consider Mr Newton may have failed to act carefully and competently in line with his obligation under rule 42E(a)(iii) of the CPEng code of ethics, to act carefully and competently, such that a ground for discipline under section 21(1)(b) of the CPEng Act may apply in this case.
9. Additionally, we consider the failure to adequately advise his clients raises concerns with whether Mr Newton has acted negligently such that a ground for discipline under section 21(1)(c) of the CPEng Act may apply in this case.

#### **Membership**

10. In respect of Mr Newton's membership of Engineering New Zealand, his failure to adequately advise his client may also be considered a failure to undertake engineering activities in a careful and competent manner, breaching his obligation under clause 4 a. iii. of the Code of Ethical Conduct for members, such that he has potentially breached rule 4.3 of the Membership Rules.

### **Issue 3: Failure to undertake engineering services competently and with care**

1. Paragraphs 1 – 5 for issue two are repeated for issue three.
2. The Council issued a Notice to Fix to the property's owners on 11 September 2019. The same day, Mr Newton applied for a COA for the property on behalf of the property's owners. This included engineering designs for the earthquake strengthening to 100%NBS dated 24 July 2017 by Mr Newton, the DSA signed by Mr Newton, a PS2 by Design Phase Limited dated 25 June 2019 signed by Engineer X referring to strengthening to 100%NBS.
3. On 20 September 2019 the Council inspected the building work. The inspection failed for a number of reasons, including:
  - the peer review did not correspond with the working drawings;
  - the PS1 needed to be revised to correct the %NBS; and
  - the engineer's construction inspection notes needed to reflect the absence of ground floor shear walls.
4. The application for the COA was rejected by the Council. A second COA application was filed on 23 October 2020 which was rejected by the Council on 3 November 2020 due to various shortcomings in the documentation and signoffs provided.
5. On 24 December 2020 Mr Newton submitted a third COA. The documentation for this COA was peer reviewed by an engineer at Spencer Holmes. This peer review found several areas of concern such as:
  - a. The situation of the existing building was not well described. Mr Newton did not provide the original drawings or a comprehensive DSA.
  - b. Work described in the calculations was not shown in the drawings. The scope of the strengthening needed clarification.
  - c. The assessment did not include a calculation of the existing floor diaphragms and building foundations.
  - d. The ductility of the walls had not been determined.
  - e. The PS2, although issued by the peer reviewer Design Phase Ltd and signed by Engineer X of that company, was noted as signed on behalf of Structural Concepts Ltd, rather than Design Phase Ltd.

#### **CPEng**

6. We consider the complex and contradictory nature of the various documents submitted to the Council in regard to Building B raises concerns with whether Mr Newton has acted in accordance with his obligation under rule 42E(a)(iii) of the CPEng code of ethics, to act carefully and competently, such that a ground for discipline under section 21(1)(b) of the CPEng Act may apply in this case.

#### **Membership**

7. In respect of Mr Newton's membership of Engineering New Zealand, the complex and contradictory nature of his documentation may also be considered a failure to undertake engineering activities in a careful and competent manner, breaching his obligation under clause 4 a. iii. of the Code of Ethical Conduct for members, such that he has potentially breached rule 4.3 of the Membership Rules.